

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO. RP765/2008

Employee

against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M O'Connell BL

Members: Mr C Ormond
Ms E Brezina

heard this appeal at Dublin on 9th December 2008

Representation:

Appellant: In person

Respondent: Dr. Mary Redmond
Arthur Cox, Solicitors, Earlsfort Centre, Earlsfort Terrace, Dublin 2

The decision of the Tribunal was as follows:

Appellant's Case:

The appellant commenced his initial employment with the respondent company in 1995, as a haulage driver. He left the employment on two occasions to take up other work, but returned to the respondent company on both occasions, the last period of employment being from 23rd October 2000 until 23rd May 2008. At first the appellant worked days and nights in two-week blocks, but this didn't suit him and so after a time he worked nights only. There was no written contract of employment and he received payslips only when he requested them.

The appellant was aware that a row had occurred between the managing director (MD) of the company and the contractor that he did the night shift for. The appellant was told by MD on Monday 19th May 2008 that the night contract would finish at the end of that week. The appellant continued to do his shifts for the rest of that week. There was no other night work and MD told him that day work would be made available to him. The appellant believed that day work paid a lower rate of pay. The appellant did not wish to work during the day for personal reasons and was confident that he could find night work with another company. On Monday 26th May he signed on at his local labour exchange and that evening secured night work with another haulier to commence

the following Monday.

Day work did not suit the appellant and he considered that being asked to work days was an unreasonable change to his terms of employment. He also contended that MD had told him he would receive a redundancy payment.

Respondent's Case:

The company lost the night contract which the appellant worked on and MD informed the appellant on Monday 19th May 2008. The loss of this contract meant that the company had no night work to offer the appellant and so MD gave evidence that he offered the claimant day work. The appellant refused to consider the offer. They did not discuss the rate of pay for day-work, but MD contended that it would have been more than the appellant had received previously, as day-work was now more lucrative. On Friday 23rd May the appellant told MD that he was leaving, which upset MD and he asked him to stay.

MD denied that he had ever offered a redundancy payment to the appellant, but rather he had offered him alternative work. The issue of redundancy was raised by the contractor, of the lost contract, in relation to a different employee and was not raised by MD. MD agreed that he had not given the appellant a written contract of employment and that he only issued payslips when requested as they were left around the yard and in the trucks.

Determination:

The appellant was employed as a truck driver at night-time. This work ceased towards the end of May 2008 due to reasons external to the respondent company. As a result the MD of the respondent company asked the appellant to work days. For private family reasons day work did not suit the claimant. The claimant was not dismissed. The claimant was not made redundant; rather he chose to take up an offer of night work from a third party immediately. As such, he left the respondent company's employment voluntarily. Accordingly, he is not entitled to the relief claimed

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)